

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISAIAH THOMPSON-BONILLA,

No. C 05-1350 SI (pr)

Petitioner,

ORDER

v.

W. A. DUNCAN, warden,

Respondent.

Petitioner filed this action on April 4, 2005 and within a few weeks requested a stay of proceedings so he could exhaust state court remedies as to some new claims he had discovered. This action was stayed and administratively closed in June 2005.

On May 4, 2006, he filed a document entitled “first leave to amend habeas corpus; pending stay and abeyance action,” which the court construed as a motion to lift the stay and file an amended petition that the court had received on May 4, 2006. The court granted the motion (docket # 9) and permitted the filing of the amended petition (docket # 11). In its order to show cause, the court identified two claims in the amended petition – i.e., an equal protection claim regarding the application of the Three Strikes Law and a due process claim based on a breach of a 1990 or 1992 plea agreement. Respondent filed his answer on October 4, 2006 addressing those two claims. Petitioner filed his traverse on December 26, 2006 addressing those two claims.

Meanwhile, as though proceeding on a separate track, petitioner submitted on November 16, 2006 an unsigned document entitled “Notice And ‘Amended’ Petition Following Lifting Of Stay.” The proof of service indicates that the Notice was sent to the court but not to

1 respondent's counsel. Petitioner stated in the Notice that he moved "to amend his habeas
2 petition to include the two (2) additional claims recently exhausted in state court proceedings."
3 Notice, p. 2. The Notice had seven claims in it, including the two claims that were in the
4 amended petition (docket # 11) filed six months earlier. Petitioner did not explain why he
5 waited six months to submit a document that raised all his claims or explain why he had filed
6 an amended petition that raised only two claims. It may be that petitioner intended the Notice
7 received by the court on November 16, 2006 to be a second amended petition that asserted all
8 seven of his claims, although the court is not certain of that interpretation. The confusion needs
9 to be resolved so that this court and any reviewing court know how many claims need to be
10 addressed. Accordingly,

11 1. Petitioner must file and serve on respondent's counsel any motion to amend and
12 proposed second amended petition no later than **June 29, 2007**. If petitioner wants the "Notice
13 And 'Amended' Petition Following Lifting Of Stay," to be considered as a second amended
14 petition, he must file and serve a signed copy of it with a new cover page that specifically
15 identifies it as a "Second Amended Petition." He also must file and serve with it a motion to
16 amend that explains why he did not file it until six months after the stay was lifted. If petitioner
17 does not file a motion to amend by the June 29, 2007 deadline, the court will interpret that to be
18 an abandonment of all the claims mentioned in the Notice that were not included in the amended
19 petition (docket # 11).

20 2. Respondent must file and serve any opposition to a motion to amend no later than
21 **August 3, 2007**.

22 The parties do not need to brief the merits of any of the claims at this point, as the court
23 is only determining whether to permit the filing of a second amended petition. If a second
24 amended petition is permitted, the court will set a briefing schedule for an amended answer and
25 amended traverse to address the claims.

26 IT IS SO ORDERED.

27 DATED: May 15, 2007

28 
SUSAN ILLSTON
United States District Judge